

**JUDGE DAVID BRIONES**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**FILED**  
**2008 MAY 15 AM 10:42**  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY

EDUARDO CARO,  
Plaintiff,

VS.

PENSKE TRUCK LEASING CO., L.P.,  
Defendant.

§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. \_\_\_\_\_

**EP08CA0180**

**DEFENDANT'S NOTICE OF REMOVAL**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS:

Please take notice that, pursuant to 28 U.S.C. §§ 1331 and 1441, Defendant, Penske Truck Leasing Co., L.P. ("Penske" or "Defendant"), hereby removes to this Court the state court action described below:

1. On April 3, 2008, Plaintiff, Eduardo Caro ("Caro" or "Plaintiff"), commenced an action against Defendant, his alleged former employer,<sup>1</sup> in the County Court at Law Number 6, El Paso County, Texas. This action is entitled *Eduardo Caro v. Penske Truck Leasing Co., L.P.*, Cause No. 2008-1310. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is a copy of all process, pleadings, and orders served upon Penske in this case as well as the verified original answer of Penske.

2. The first date upon which Penske received a copy of Plaintiff's Original Petition was April 24, 2008, when Penske was served with a copy of said petition and citation from the El Paso District Clerk. Defendant files this notice within 30 days after a receipt of the initial

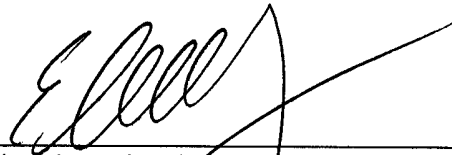
<sup>1</sup> Plaintiff's Original Petition improperly names "Penske Truck Leasing Co., L.P." as Plaintiff's employer. Penske Logistics, LLC is the entity that employed Plaintiff at all time relevant to this case. See Defendant's Original Answer, Exhibit A attached hereto.

pleading setting forth the claim of relief upon which such action or proceeding is based. 28 U.S.C. § 1446(b).

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action arising under the Constitution, treaties, or laws of the United States. Plaintiff's Original Petition alleges violations of the Family Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.*

4. This Notice is timely filed pursuant to 28 U.S.C. § 1446(b). Penske is filing this removal within thirty days of April 24, 2008, the date that Penske was served with Plaintiff's Original Petition.

Respectfully submitted,



---

Eduardo F. Cuaderes Jr.  
State Bar No. 05200800  
Gustavo Edelberto Cuadra  
State Bar No. 24038850

LITTLER MENDELSON, P.C.  
A Professional Corporation  
2001 Ross Avenue, Suite 1500  
Lock Box 116  
Dallas, Texas 75201.2931  
214.880.8100  
214.880.0181 (Facsimile)  
[jcuaderes@littler.com](mailto:jcuaderes@littler.com)  
[ecuadra@littler.com](mailto:ecuadra@littler.com)

Jeanne C. Collins  
State Bar No. 04611750

Kemp Smith LLP  
221 N. Kansas, Suite 1700  
El Paso, Texas 79901  
(915) 533-4424  
(915) 546-5360 (FAX)  
[Cezy.Collins@kempsmith.com](mailto:Cezy.Collins@kempsmith.com)

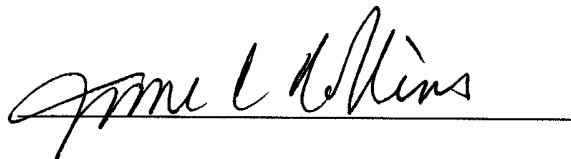
Attorneys for Penske Truck Leasing Co., L.P.

**CERTIFICATE OF SERVICE**

I certify that this foregoing Notice of Removal was served to the following counsel of record, via certified mail, return receipt requested, on the 15<sup>th</sup> day of May, 2008, as follows:

Enrique Chavez, Jr.  
Chavez Law Firm  
2101 North Stanton Street  
El Paso, Texas 79902

Firmwide: 85082783.1 800000.3500

A handwritten signature in cursive script, appearing to read "Jeanne C. Collins", is written over a horizontal line.



CORPORATION SERVICE COMPANY

RECEIVED

APR 24 2008

WIKY L. SCHREY

Tracy

## Notice of Service of Process

TVW / ALL  
Transmittal Number: 5738391  
Date Processed: 04/24/2008

Primary Contact: Janice Kloc  
Penske Truck Leasing Co.  
Route 10 Green Hills  
Legal Department  
Reading, PA 19603

Copy of transmittal only provided to: Michael Duff Esq.  
Joann Mohr

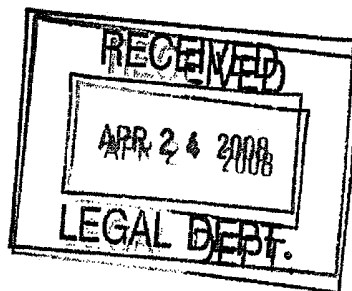
---

Entity:	Penske Truck Leasing Co., L.P. Entity ID Number 2112340
Entity Served:	Penske Truck Leasing Co., L.P.
Title of Action:	Eduardo Caro vs. Penske Truck Leasing Co., L.P.
Document(s) Type:	Citation/Petition
Nature of Action:	Labor / Employment
Court:	El Paso District Court, Texas
Case Number:	2008-1310
Jurisdiction Served:	Texas
Date Served on CSC:	04/24/2008
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Certified Mail
Plaintiff's Attorney:	Enrique Chavez, Jr. 915-351-7772

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC  
CSC is SAS70 Type II certified for its Litigation Management System.  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)



B67-CITATION FOR PERSONAL SERVICE-Either Court-by Certified Mail-Rev. 9-07

## THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **PENSKE TRUCK LEASING CO., L.P.**, who may be served with process by serving its registered agent, Csc Lawyers Incorporated Service, at 701 Brazo, Ste. 1050, Austin, Tx 78701

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable County Court No. 6, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on 04/03/2008, by Attorney at Law CHAVEZ JR., ENRIQUE, 2101 STANTON, EL PASO TX 79902, in this case numbered 2008-1310 on the docket of said court, and styled:

CARO, EDUARDO vs. PENSKE TRUCK LEASING CO., L.P.

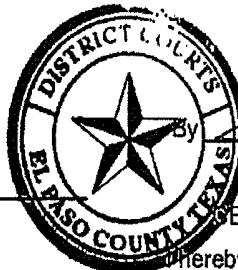
The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, this 14th day of April, 2008.

Attest: GILBERT SANCHEZ, District Clerk, El Paso County, Texas.

CLERK OF THE COURT  
GILBERT SANCHEZ, District Clerk  
Rm. 103 COUNTY COURTHOUSE  
500 E. SAN ANTONIO  
El Paso Texas, 79901



By Gilberto Valenzuela, Deputy  
Gilberto Valenzuela

ATTACH  
RETURN RECEIPTS  
WITH

ADDRESSEE'S SIGNATURE

Rule 106 (a) (2) the citation shall be served by mailing to the defendant by certified mail. Return receipt requested, a true copy of the citation \_\_\_\_\_.

Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

CERTIFICATE OF DELIVERY BY MAIL  
I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_, I mailed to \_\_\_\_\_

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the Plaintiff's Original Petition attached thereto.

\_\_\_\_\_  
\*NAME OF PREPARER TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
TITLE

\*If not applicable so state N/A.  
DISTRICT CLERK 20

867-CITATION FOR PERSONAL SERVICE-Elther Court-by Certified Mail-Rev. 9-07

**RETURN OF SERVICE**

A true copy of the Citation with a copy of the \_\_\_\_\_ attached thereto was mailed to \_\_\_\_\_, by certified mail, return receipt requested.

Delivery was completed on \_\_\_\_\_, delivered to \_\_\_\_\_ as evidenced by Domestic Return Receipt PS Form 3811 attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was returned undelivered marked \_\_\_\_\_.

This forwarding address was provided: \_\_\_\_\_.

Attest: GILBERT SANCHEZ, District Clerk  
El Paso County, Texas

By: \_\_\_\_\_  
Deputy District Clerk

OR

\_\_\_\_\_  
Name of Authorized Person

By: \_\_\_\_\_

**VERIFICATION BY AUTHORIZED PERSON**

State of Texas  
County of El Paso

Before me, a notary public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing Return of Service, and being by me first duly sworn, declared, "I am a disinterested party qualified to make an oath of that fact and the statements contained in the Return of Service are true and correct."

Subscribed and sworn to be on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

COPY

IN THE JUDICIAL DISTRICT COURT  
COUNTY COURT AT LAW NUMBER  
OF EL PASO COUNTY, TEXAS

FILED  
GILBERT SANCHEZ  
DISTRICT CLERK  
APR 10 PM 12 57  
EL PASO COUNTY, TEXAS

EDUARDO CARO,

Plaintiff,

v.

PENSKE TRUCK LEASING CO., L.P.

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Cause No.

2008-01-10

**ORDER FOR SERVICE**

It is ORDERED by the Court, pursuant to Rule 103, and 106 of the Texas Rules of Civil Procedure that *Sergio Reyes/Sylvia Loya, d/b/a SSR Process Service*, who is not less than eighteen years of age, is a disinterested and unrelated party, serve process on **PENSKE TRUCK LEASING CO., L.P.**, by serving its registered agent, **CSC Lawyers Incorporated Service, 701 Brazo, Ste. 1050, Austin, Texas 78701** or wherever it may be found, and attach a true copy of Plaintiff's First Amended Original Petition to any and all process.

IT IS FURTHER ORDERED, that a copy of this Order will be delivered along with a copy of the pleadings served to each Respondent and that any and all such processes be returned in compliance with Rule 105, 106, 107, and 109 of the Texas Rules of Civil Procedure.

IT IS SO ORDERED.

SIGNED and ENTERED on this the 9 day of April 2008.

  
Judge Presiding

Approved As To Form:

  
Enrique Chavez, Jr.

COPY

IN THE COUNTY COURT AT LAW NUMBER 6  
EL PASO COUNTY TEXAS

EDUARDO CARO,

PLAINTIFF,

V.

PENSKE TRUCK LEASING CO., L.P.,

DEFENDANT.

§  
§  
§  
§  
§  
§  
§  
§  
§

FILED  
GILBERT SANCHEZ  
DISTRICT CLERK  
Cause No. 2008-1310  
2008 APR 3 PM 2 06  
EL PASO COUNTY, TEXAS  
BY \_\_\_\_\_  
DEPUTY

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE COURT:

Plaintiff EDUARDO CARO, now complains of PENSKE TRUCK LEASING CO., L.P., Defendant, and respectfully shows the court and jury as follows:

**I. Discovery Level**

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

**II. Jurisdiction**

2. This is a proceeding authorized by and instituted pursuant to the Family & Medical Leave Act of 1993 (FMLA). 29 U.S.C. §2601, *et seq.* It is brought to prevent Defendant from denying, restraining or otherwise interfering with the rights guaranteed Plaintiff by the FMLA, and to recover damages and other relief authorized by section 2617(a) of the FMLA. 29 U.S.C §2617(a).

3. Jurisdiction is proper by virtue of section 2617(a)(2) which provides for concurrent jurisdiction in a State Court for actions arising under the FMLA. 29 U.S.C. §2617(a)(2).

**III. Parties**

4. Plaintiff is a citizen of the United States and a resident of Texas. He is an employee and an eligible employee within the meaning of the FMLA. 29 U.S.C § 2611. Plaintiff has been subjected to unlawful employment practices committed within the State of Texas.

5. PENSKE TRUCK LEASING CO., L.P. is an employer within the meaning of section 2611(4) of the FMLA in that PENSKE TRUCK LEASING CO., L.P. employs and has employed 50 or more employees for each working day during each of



twenty or more calendar work weeks during the applicable time period, and is engaged in commerce or in an industry or activity affecting commerce. Defendant PENSKE TRUCK LEASING CO., L.P. may be served by serving its agent for service of process, CSC Lawyers Incorporated Service, 701 Brazo, Ste. 1050, Austin, Texas 78701.

#### IV. Facts and Causes of Action

6. Plaintiff would show that PENSKE TRUCK LEASING CO., L.P. violated the FMLA with respect to him in the following and other respects:

- (a) by firing him on or about 11-26-06, without providing him the leave entitlement guaranteed by the FMLA because of his own serious health condition;
- (b) by interfering with, restraining or denying plaintiff's exercise or his attempts to exercise his rights provided by the FMLA;
- (c) by discriminating and or otherwise retaliating against him in violation of the FMLA.

7. All conditions precedent to the filing of this action have occurred or have been fulfilled.

#### V. Damages

8. Plaintiff seeks statutory damages, back pay, front pay and or lost wages and benefits in the past and future, all actual monetary losses, liquidated damages, attorney's fees, expert witness fees, costs, interest and such other and further legal and equitable relief to which Plaintiff is entitled pursuant to the FMLA.

9. Plaintiff is entitled to actual damages, including pecuniary damages, mental anguish or emotional pain and suffering, inconvenience, and loss of enjoyment of life in the past and in the future, and such other and further relief to which Plaintiff is entitled because of the actions and or omissions complained of above.

10. Additionally, to the extent permitted by law, Plaintiff is entitled to recover punitive damages because Defendants acted with malice as contemplated by Chapter 41 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code, Ch. 41.

**VI. Jury Demand**

11. Plaintiff demands this case be decided by jury as allowed by Texas Rule of Civil Procedure 216.

**VII. Request for Disclosure**

12. Pursuant to Texas Rule of Civil Procedure 194, Defendant is requested to disclose the information and material described in Rule 194.2(a)-(k).

**VIII. Prayer**

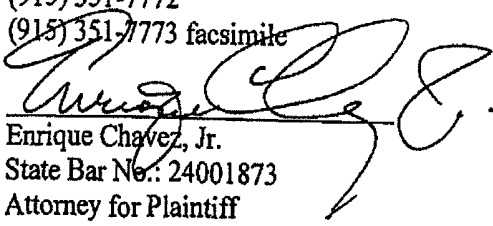
MR. CARO respectfully prays that he recover from Defendant PENSKE TRUCK LEASING, CO., L.P. statutory damages under the FMLA, actual damages, and punitive damages under Texas law, plus prejudgment interest, post-judgment interest and such other and further relief to which he may show himself to be justly entitled, in law and in equity. The amount sought herein is within the jurisdictional limits of the court.

SIGNED on this 28 day of March, 2008.

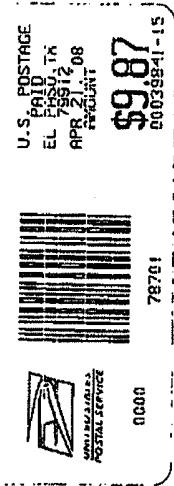
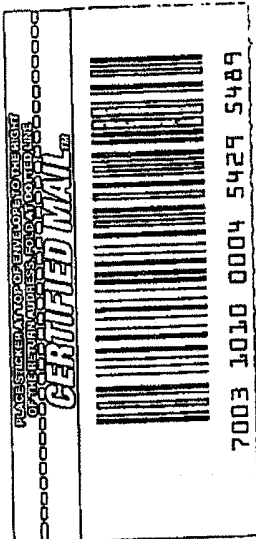
Respectfully submitted,

CHAVEZ LAW FIRM  
2101 N. Stanton Street  
El Paso, Texas 79902  
(915) 351-7772  
(915) 351-7773 facsimile

By:

  
Enrique Chavez, Jr.  
State Bar No.: 24001873  
Attorney for Plaintiff

SSR SERVICES  
P.O. BOX 371475  
EL PASO, TX. 79937



RESTRICTED  
DELIVERY

RESTRICTED  
DELIVERY

PENSKE TRUCK LEASING CO., L.P.  
\* CSC LAWYERS INCORPORATED SERVICE  
701 BRAZOS ST., SUITE 1050  
AUSTIN, TX. 78701

